

Matters relating to Mutual Legal Assistance between States in the Holy Quran and the Treaty Practices of the Prophet

Dr. Matanat Pasha Asgarova,

PhD in jurisprudence, professor of the Department of Criminal Procedure, Criminalistics and Forensic Examination of the Justice Academy of the Ministry of Justice of the Republic of Azerbaijan, Counsellor of Justice

ORCID: 0000-0003-1419-9519

Abstract

Legal assistance in criminal matters between states has gone from elementary extradition of fugitive community members, serfs, one-time assistance in a diplomatic procedure to institutionalized legal assistance on the basis of multilateral and bilateral treaties by other states, from lack of a legislative basis to codification of issues of legal assistance, from inclusion of certain norms on certain aspects of legal assistance in treaties of friendship, peace, cooperation or even surrender to the conclusion of special bilateral treaties. At different periods in the history of States, religious, linguistic, kinship, etc., have united to facilitate inter-State relations, including legal assistance in criminal matters. Although most states are secular, the influence of religious norms on interstate relations, including cooperation between states in the area of legal assistance, is undeniable. The provisions of the Holy Quran cover the entire life of Muslims, as well as state activities and interstate relations. For example, despite the fact that the EU is a secular association, “the dialogue with churches, religious associations or communities and philosophical and non-confessional organizations was established in the beginning of the 1990s by EU Commission and allows for an open exchange of views between EU institutions and important parts of European society on EU policies, which offers an opportunity to engage in the European policy making [10]. Assistance in the holy Quran is one of the clearly articulated and widely applied provisions, also applied in the aspect of mutual legal assistance. Integration processes, internationalization of crime create new problems in the provision of legal assistance in criminal cases, which require further improvement and development of this institution, considering historical experience. The treaty practice of the Prophet Muhammad is rich in provisions for the provision of legal assistance in criminal cases between states and each treaty between tribes includes different elements of legal assistance based on the specifics of bilateral and regional relations. We believe that the Prophet Muhammad's treaty practice of providing legal assistance between states in criminal matters is exemplary for modern states, including those states that are or were in unfriendly relations or with different religious beliefs of the population.

Keywords: Criminal procedural law, Muslim law, the Holy Quran, Prophet’s treaties, legal assistance in criminal matters.

1. Introduction (Times New Roman 10 Bold)

The comparative analysis of the holy Quran, treaties, and Hadith of the Prophet with the provisions of the criminal procedural legislation of the Azerbaijan Republic and international treaties on legal assistance is carried out. The provisions of Islamic law regulate interstate relations in Muslim states and have left an imprint on the legal regulation of legal assistance in Muslim states even after the separation of religion from the state. For example, after the Islamization of Azerbaijan in the Middle Ages, before Azerbaijan was part of the USSR, Azerbaijan law was almost Islamic law and the provisions of Muslim law also regulated the issues of legal assistance between states, after the separation of religion from the state religion continues to adjust and influence the behavior of people, including workers of law enforcement agencies.

The practical significance of the results lies in the fact that the examples given in the article, the analysis of the national Azerbaijan Republic, and the provisions of international treaties and provisions of the Koran and other sources of Islamic law, can be used to improve the legislation and practice of legal assistance. The analysis and generalized conclusions given in the article can also be used in the preparation of scientific comments to the criminal, criminal procedure, and other codes and laws, which regulate the issues of mutual legal assistance between states in criminal cases. The practical significance of the results is that the fact that the examples given in the article, the analysis of the national Republic of Azerbaijan and the provisions of international treaties and the provisions of the Quran and other sources of Muslim law, can be used to improve the legislation and practice of providing legal assistance. The analysis and generalized conclusions of the article can also be used in the preparation of scientific comments on the criminal, criminal procedure, and other codes, and laws that regulate the provision of mutual legal assistance between states in criminal cases.

2. Significance of The Study

The purpose of the article is to analyze the provisions of the Holy Quran and the treaty practice of the Prophet Muhammad in the aspect of international cooperation in combating crime and the role of Islamic law in the development of the institute of legal assistance between states in criminal matters and to develop on this basis recommendation for the improvement of the institution of legal assistance in criminal matters.

The relevance of the study is due to the fact that the fight against crime and ensuring the rights and freedoms of the person declared the highest value is the responsibility of the state at the national and international level. The peaceful coexistence of states with different structures and levels of democracy, linguistic, religious, political, and other features requires the cooperation of states at the bilateral and international level. Politics and religion are interrelated concepts and mutual influence, the political significance of religion has undergone changes in historical development from complete politicization to formal isolation and is characterized by instability. In any interconnectedness, the influence of religion on state politics can be traced throughout human development. Fighting crime and respect for human rights are the highest values of all celestial religions and norms of behavior of believers. Islam's attitude toward fighting crime and respect for religious beliefs are common knowledge. The ultimate goal of any Islamic decree is to take care of the welfare of people in this world and the next, by establishing a holy society. "Allah desires ease for you, and He does not desire hardship for you" (al-Baqarah, 2/185).

Crime is also combated through the provision of legal assistance in criminal cases on a bilateral basis, through international organizations and multilateral treaties. The provision of legal assistance from elementary cases of extradition of criminals at the intercommunal level, at the level of rulers, has risen to the level of codification and institutionalization. The history of Islam is rich in various treaties on cooperation, security, trade, etc., which provide for assistance in various areas of cooperation, including legal assistance. The provisions of the Holy Quran and other sources of Muslim law stood at the origins of interstate assistance. Therefore, the analysis of these legal monuments and sources of law will help the development of the institute, considering the provisions of the Holy Quran and other sources of Muslim law, the development of bilateral treaties, for example, without the inclusion of norms on the reciprocity of assistance/

3.Review of Related Studies

The theoretical basis of the study was the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms,1950; the Declaration on Principles of International Law,1970; the Vienna Convention on the Law of Treaties,1969; the Rome Statute of the International Court of Justice,1998; the UN Convention against Corruption,2003; the Criminal Law Convention on Corruption,1999; the Convention on Cybercrime, 2001; the European Convention on the Suppression of Terrorism,1977. Theoretical problems of legal assistance between states in criminal cases are reflected in a number of works by **A.V. Petrovsky, A.V. Nesterova, Mehmet Ali Kapar**. Legal assistance in criminal cases between states was formulated during the centuries-old practice of states and the influence of separate legal families and states in the development of this institute was traced in the improvement of individual elements and the whole institute. The development of international law, national law, including the development of legal assistance in criminal cases has undergone the influence of Islamic law. The issues of assistance in the holy Quran, hadiths were not studied in the aspect of legal assistance between states in criminal cases. Therefore, the study of legal assistance in criminal cases between states in the sources of Islamic law will fill the gap on the role of Islamic law in the development of legal assistance and provide an opportunity to improve the modern theory and practice of legal assistance in criminal cases between states. In international and bilateral treaties, introducing Islamic provisions for legal assistance in criminal cases into academic and treaty practice will also help in the use of other provisions of Islamic law in resolving other legal conflicts. When drafting international and bilateral treaties, one usually refers to the practice of European states, to the theory and practice of Roman law or continental law, where the influence of religion has continued throughout history. While we propose the use of Islamic law sources for legal assistance in criminal cases, we also support the use of other celestial religions.

4.Objectives of The Study

- To study of Legal assistance matters in criminal cases in the Holy Quran.
- To study of legal assistance matters in the hadiths of the Prophet
- To study the treaty practice of the prophet on legal assistance in criminal matters
- To find out the possibilities of using and applying the norms of the Koran and the historical contractual practice of the Prophet in modern agreements on mutual legal assistance in criminal matters between states.

5.Hypotheses of The Study

- Mutual legal assistance questions in the Quran and treaty practice of the Prophet remain unexplored.
- Lawyers, including of other historical cultures, do not have sufficient understanding of the forms and features of mutual legal assistance in criminal cases of the time of the Prophet.
- The norms of the Holy Quran, the provisions of the treaties of the Prophet are not applied in the modern practice of states in the development and conclusion of modern treaties on mutual legal assistance between states.

6.Population and Sample

The norms of the Holy Quran, the provisions of the hadiths and treaties of the Prophet in the aspect of legal assistance between states in criminal cases are analyzed, a comparative analysis is made with the provisions of modern international treaties, Code of Criminal Procedure and Code of the Republic of Azerbaijan, regulating legal assistance in criminal cases.

6.1. Statistical Techniques Used in the Present Study

About 50 treaties, hadiths, norms of the Koran, provisions of the Code of Criminal Procedure and the Criminal Code of the Republic of Azerbaijan on mutual legal assistance were used in the studies.

6.2. Data Analysis and Interpretation

6.2.1. Mutual legal assistance in criminal matters between states in the Holy Quran

Globalization and the transnational nature of crime require the widest cooperation of states in combating crime. The Holy Quran provides for the suppression of offenses and assistance in suppressing offenses. The Quran does not distinguish between assistance between states and persons but defines the general terms of assistance:” Were it not that God repels people by means of others: monasteries, churches, synagogues, and mosques-where the name of God is mentioned much-would have been demolished. God supports whoever supports Him. God is Strong and Mighty [al-Hajj, 22/40]; “And fight in the cause of God those who fight you, but do not commit aggression; God does not love the aggressors” [al-Baqarah, 2/190].

One of the fundamental principles of Islam is cooperation, and this means cooperation among peoples, tribes: “O people! We created you from a male and a female and made you races and tribes, that you may know one another. The best among you in the sight of God is the most righteous. God is All-Knowing, Well-Experienced” [al-Hujurat, 49/13]. The Holy Quran provides for the obligatory observance of promises and agreements: “And honor your pledge, because the pledge involves responsibility” [al-Isra,17/34]; “Fulfill God’s covenant when you make a covenant and do not break your oaths after ratifying them. You have made God your guarantor, and God knows what you do” [an-Nahl,16/91].

The Prophet Mohammad's work is the best example of mutual assistance. He never refused those who asked him, and he himself urged them to help the needy. “It was narrated that Abu Sa’ed Al Khudri said: While we were on a journey with the Prophet, a man came to him on a mount of his and started looking to his right and left. The Messenger of Allah said: “Whoever has a surplus mount, let him give it to one who has no mount, and whoever has surplus provisions, let him give them to one who has no

provisions” [23, p.551 (Hadith,1728)]. This Hadith also shows the attitude of the Prophet, as head of state, toward aid.

Muslims should help each other only in good deeds. Fighting crime is a good deed in the Holy Quran as well. In the Quran, the Almighty commanded (meaning): “And cooperate with one another in virtuous conduct and conscience, and do not cooperate with one another in sin and hostility. And fear God. God is severe in punishment” [al-Mai’dah, 5/2].

Islamic law seeks to achieve the welfare of human beings: “We sent Our messengers with the clear proofs, and We sent down with them the Book and the Balance, that humanity may uphold justice. And We sent down iron, in which is violent force, and benefits for humanity” [al-Hadid, 57/25]; “God intends to make things clear to you, and to guide you in the ways of those before you, and to redeem you. God is Most Knowing, Most Wise”, “God intends to redeem you, but those who follow their desires want you to turn away utterly”, “God intends to lighten your burden, for the human being was created weak” [al-Nisa, 4/26-28]; “God commands justice, and goodness, and generosity towards relatives. And He forbids immorality, and injustice, and oppression. He advises you, so that you may take heed” [al-Fatihah,16/90].

In Islam, well-being is achieved by preserving life, religion, prudence, lineage, and property. To protect these objects Islamic law provides retribution (to preserve life), punishment for apostasy (to protect religion), punishment for drunkenness (to protect prudence), punishment for adultery (to preserve lineage), punishment for theft (to protect property), etc. Fighting crime is one of the goals of Islamic law, and it is a good deed, so helping in good deeds relates to legal aid between states. Islam forbids helping those who ask for support from Muslims if it violates existing agreements. God says: “But if they ask you for help in religion, you must come to their aid, except against a people with whom you have a treaty. God is Seeing of what you do” [al-Anfal, 8/72].

The Holy Quran and Sunnah of the Prophet talk a lot about the importance of mutual aid and brotherhood in Islam, and Islam is guided by the principle of reciprocity in its relations with other nations. Mutual aid and support also exist in interstate relations: “The believers are brothers” [al-Hujurat,49], “By His grace you became brethren” [al-Imran, 3/103].

It is not possible to find in the sources of Islam that there is an obligation of reciprocity in the provision of aid. Reciprocity is not expected from whom help is given but from Allah.

“...The Sharia distinguishes the following three categories: 1) Muslims - a part of the population of the Islamic state, confessing Islam, in respect of which the criminal law should act in full; 2) Ahl az-zimma - non-believers (Christians, Jews), permanently residing in the Muslim state, paying a daily tax (jizya) and receiving for this from Muslims protection (zimma) from external enemies and a guarantee of inviolability of person and property on a par with Muslims; 3) Harbis - non-Muslims belonging to an enemy state, who are guaranteed inviolability of person and property while in the territory of the Islamic state only if they have a permit from the authorities... the responsibility for committing hudud crimes, with the exception of unproven accusation of adultery of ghazf by a Muslim, does not apply to ahal az-zimma and harbi” [19,p.25-26].

The Quran also regulates the relationship between Muslims and holders of heavenly religions (Jews, Christians, and others) in two verses of the Quran: “As for those who have not fought against you for

your religion, nor expelled you from your homes, God does not prohibit you from dealing with them kindly and equitably. God loves the equitable” [al-Mumtahina, 60/8]; “But God prohibits you from befriending those who fought against you over your religion, and expelled you from your homes, and aided in your expulsion. Whoever takes them for friends—these are the wrongdoers” [al- Mumtahina, 60/9].

Brotherhood is one of the noble tenets of Islam, and as the history of Islam shows, and in relations between Muslims as well as with other people living in Islamic states it has been applied without distinction. This is because Islam is based on the unity of creatures and the Creator, the unity of the human race, and the unbreakable brotherhood of human beings. Allah says: “Humanity used to be one community; then God sent the prophets, bringing good news and giving warnings. And He sent down with them the Scripture, with the truth, to judge between people regarding their differences. But none differed over it except those who were given it—after the proofs had come to them—out of mutual envy between them. Then God guided those who believed to the truth they had disputed, in accordance with His will. God guides whom He wills to a straight path” [al-Baqarah, 2/ 213].

States cooperate through multilateral and bilateral treaties, but the absence of such treaties does not exclude the use of other forms of cooperation. Cooperation between states is carried out within the framework of multilateral and bilateral agreements, but the absence of such agreements does not preclude the use of other forms of cooperation. Legal assistance between states is one of the areas of cooperation between states mentioned in Part 3 of Article 1 of the UN Charter, 1945 and may be provided in the absence of multilateral and bilateral treaties. Normally, legal assistance between States in the absence of treaties is subject to the principle of reciprocity. The principle of reciprocity derives from the principle of sovereign equality of States, which requires the conclusion of treaties on the basis of equality and mutual benefit.

The principle of reciprocity means that, under certain circumstances, cooperating countries, without the appropriate legal framework, may execute a request for legal assistance in the hope that similar assistance will follow in the future from the requesting state [24, p.428].

According to the Declaration on Principles of International Law, 1970, the concept of sovereign equality includes such elements as the legal equality of states, the fulfillment of their international obligations in full and in good faith, and living in peace with other states. The principle of reciprocity, based on the principle of sovereign equality of states in relations between states, is a peremptory norm (jus cogens) of international law. According to the article 53 of the Vienna Convention on the Law of Treaties, 1969 (treaties conflicting with a peremptory norm of general international law (“jus cogens”)), a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. The principle of sovereign equality and cooperation requires States to cooperate even in the absence of specific treaties and other normative instruments. Applying the principle of reciprocity to situations of legal assistance between States in the absence of a treaty, it may be stated that States must comply with requests for legal assistance, subject to the condition that the requesting State also complies with such requests.

The ancient principle of reciprocity is also reflected in the philosophical teachings of Confucius: “Do not do unto others what you would not want others to do unto you” [13]. Aristotle Famous quote is: “We should behave to our friends as we would wish our friends to behave to us” [2].

The CPC of the Republic of Azerbaijan uses the principle of reciprocity in the aspect of in the absence of such international treaty, the sentences or other final decisions of foreign courts may be recognized in case the relevant authorized body of these states provides a guarantee of the principle of reciprocity (Article 522.1) and refusal of recognition of the sentences or other final decisions of foreign courts in the Republic of Azerbaijan in connection with recognition of the sentences or other final decisions of foreign courts But the CPC does not indicate the principle of reciprocity among the basic principles of criminal proceedings.

“Mutual” is defined “as (of two or more people or groups) feeling the same emotion or doing the same thing to or for each other” [16].

The use of the principle of reciprocity expands the possibilities of international cooperation in its various directions, especially in those where the normative regulation is limited or absent. “At the same time, it is necessary to continue the study of the form and content of reciprocity in different legal systems and scientific doctrines of the world to form a uniform theory and law enforcement practice” [17].

The Quran also provides for the implementation of treaties on mutual legal assistance between peoples, communities, and states: “And do not be like her who unravels her yarn, breaking it into pieces, after she has spun it strongly. Nor use your oaths as means of deception among you, because one community is more prosperous than another...” [an-Nahl,16/92]. As can be seen from the text of the surah refers to different peoples and not just Muslims.

Muslim law allows murder only for legitimate reasons, otherwise, it is a crime, i.e., an encroachment upon God's creation: “O you who believe! Enter into submission, wholeheartedly, and do not follow the footsteps of Satan; he is to you an outright enemy!” [al-Baqarah, 2/208]; “O you who believe! When you journey in the way of God, investigate, and do not say to him who offers you peace, “You are not a believer,” aspiring for the goods of this world” [an-Nisa, 4/94]. “If they withdraw from you, and do not fight you, and offer you peace, then God assigns no excuse for you against them” [an-Nisa, 4/90]. “But if they incline towards peace, then incline towards it, and put your trust in God. He is the Hearer, the Knower” [al-Anfal,8/61].

6.2.2. Mutual legal assistance in the Hadiths of the Prophet

Narrated Abdullah bin Umar: Allah’s Messenger said, “A Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor. Whoever fulfilled the needs of his brother, Allah will fulfil his needs; whoever brought his (Muslim) brother out of a discomfort, Allah will bring him out of the discomforts of the Day of Resurrection, and whoever screened a Muslim, Allah will screen him on the Day of Resurrection” [22, Volume 3, p.361 (Hadith 2442)].

Narrated Anas: Allah’s Messenger said, “Help your brother, whether he is an oppressor or he is an oppressed one”. People asked, “O Allah’s Messenger! It is all right to help him if he is oppressed, but how should we help him if he is an oppressor?” The Prophet said, “By preventing him from oppressing

others” [22, Volume, 3, p.362 (Hadith 2444)]. This provision can be compared to the suppression, prevention of crimes, the words “By preventing” can also be understood in the sense of taking measures of a preventive nature.

Narrated Abu Huraira: Allah’s Messenger said, “Whoever has wronged his brother, should ask for his pardon (before his death), as (in the Hereafter) there will be neither a Dinar nor a Dirham. (He should secure pardon in this life) before some of his good deeds are taken and paid to his brother, or, if he has done no good deeds, some of the bad deeds of his brother are taken to be loaded on him (in the Hereafter)” [23, Volume 8, p. 290 (Hadith 6534)].

“It was narrated from Ibn ‘Umar that the Messenger of Allah said: “The believer should not be stung from the same hole twice” [23, Volume 8, p. 90 (Hadith 6133)]. This is a formula of Roman law *non bis in idem* (no one shall be punished twice for the same crime), which is enshrined in Article 4 of Protocol II to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 64 of the Constitution of the Republic of Azerbaijan, 1995; Article 34 of the CPC of the Republic of Azerbaijan, 2000.

Islam has adopted the ancient principle of reciprocity and is guided by it in its relations with other peoples, both in peace and in war, to ensure the triumph of justice, to set standards of decency and impartiality, and to ensure that the enemy does not transgress the established limits in his actions. In this connection it is necessary to mention at least one extremely important verse of the Quran: “If you were to retaliate, retaliate to the same degree as the injury done to you. But if you resort to patience—it is better for the patient” [an-Nahl, 16/126].

“...The Sharia distinguishes between the following three categories: 1) Muslims - a part of the population of the Islamic state, professing Islam, in respect of which the criminal law should act in full; 2) *Ahl az-zimma* - non-believers (Christians, Jews), permanently residing in the Muslim state, paying a daily tax (*jizya*) and receiving for this from Muslims protection (*zimma*) from external enemies and a guarantee of inviolability of person and property on a par with Muslims; 3) *Harbis* - non-Muslims belonging to an enemy state, who are guaranteed inviolability of person and property while in the territory of the Islamic state only if they have a permit from the authorities... the responsibility for committing *hudud* crimes, with the exception of unproven accusation of adultery of *ghazf* by a Muslim, does not apply to *ahal az-zimma* and *harbi*” [18,p.25-26].

Muslim law in inter-state relations is based on the principle of reciprocity, but there are other examples in the treaty practice of the Prophet. Pact of Al-Hudaybiyah [17] provision was made for the return of any Meccan who might flee to Medina without permission from his guardian, although a similar provision for Muslims going to Mecca was not stipulated and in fact is an exception to the principle of reciprocity. The Prophet agreed to fulfill the terms of the agreement proposed by the Quraysh, and the clause of the agreement on the fugitives had to be fulfilled on the first day. While the scribes were writing down the text of this treaty, the son of Suhail Abu Jandal, who converted to Islam, came to the Muslims to seek asylum. Suhail immediately began to demand: “According to the concluded agreement, return my son to me!”. “When Allah’s Messenger concluded the truce with Suhail bin Amr on the day of Al-Hudaybiyah, one of the conditions which Suhail bin Amr stipulated, was his saying (to the Prophet), “If anyone from us (i.e. infidels) ever comes to you, though he has embraced your religion, you should return him to us, and should not interfere between us and him”. Suhail refused to

conclude the truce with Allah's Messenger except on this condition. The believers disliked this condition and got disgusted with it and argued about it. But when Suhail refused to conclude the truce with Allah's Messenger except on that condition, Allah's Apostle concluded it. Accordingly, Allah's Messenger then returned Abu Jandal bin Suhail to his father, Suhail bin Amr, and returned every man coming to him from them during that period even if he was a Muslim [22, Volume 5, p. 304 (Hadith 4180,4181)]. At this point, states, based on the principle of the sovereign equality of states, are unwilling to depart from this principle and there are almost no treaties on unilateral obligations to return criminals without reciprocity, so the Hudaibiyah Treaty is exemplary in the aspect of unilateral legal assistance without reciprocity.

The Najran Treaty,⁶³¹ provides that “the protection of God and the guarantee of the Prophet Muhammad, extend on Najran and neighborhood, that is to say on their goods, their people, the practice of their worship, their absent and present, their families and their sanctuaries, and all that large and small, is in their possession. No man among them will be held for a person in charge of the fault of another” [14]. It is indicative of the principle of culpability and individual responsibility of the offender, which almost all states are guided by in their criminal codes, for example Article 7 (The principle of the responsibility for fault) of the CPC of the Azerbaijan Republic. The principle of individual responsibility under international criminal law was one of the most important theses of the Nuremberg trials for the crimes against peace, war crimes: crimes against humanity (The Judgment of Nuremberg International Military Tribunal, 1946 [29], replacing the Briand-Kellogg doctrine [12], which dealt only with state responsibility for committing aggression as an international crime.

6.2.3. Treaty practice of the Prophet in the field of mutual legal assistance

According to the Article 27 of Constitution of Medina if any un-believer kills a Believer, without good cause, he shall be killed in return, unless the next of kin are satisfied (as it creates law and order problems and weakens the defense of the State). “All Believers shall be against such a wrong-doer. No Believer will be allowed to shelter such a man” [4]. Here we see the concealment of a crime, which is reflected in Art. 307 of the Criminal Code of Azerbaijan Republic, 1999 concealment of crimes and Article 32.5 of the Criminal Code of Azerbaijan Republic, 1999 considers the promised hiding a criminal as the helper.

The Article 36 of the Constitution of Medina “Anyone who kills another without warning (there being no just cause for it) amounts to his slaying himself and his household unless the killing was done due to a wrong being done to him” [4]. This provision is a necessary defense which is provided for by Article 36 of the Criminal Code of the Republic of Azerbaijan, 1999 (causing of harm to encroaching person in condition of necessary self-defense shall not be admitted as a crime).

According to the Article 45 of the Constitution of Medina, “A stranger (individual) who has been given protection (by anyone party to this Pact) will be treated as his host (who has given him protection) while (he is) doing no harm and is not committing any crime” [4]. Those given protection but indulging in anti-state activities will be liable to punishment. This provision is the granting of national treatment to foreigners, which applies between modern states.

Whether an individual goes out to fight (in accordance with the terms of this Pact) or remains in his home, he will be safe unless he has committed a crime or is a sinner (i.e. according to the Article 56

of the Constitution of Medina, no one will be punished in his individual capacity for not having gone out to fight in accordance with the terms of this Pact) [4]. Here we trace the application of elements of the status of foreigners, whose duties do not include the defense of the homeland.

Treaty with Banu Damrah, 623 provides that they shall be aided when they are cruelly attacked. They shall also help the Prophet. "Aid shall be given for those who abide their liabilities and who are afraid of the violation of this treaty" [14]. In this agreement, the provision of assistance to the Prophet, the head of the tribe, i.e. head of state, is written in a general sense, which includes matters of assistance in criminal matters.

Treaty Signed with the Banu Ghifar provides that "It shall be incumbent on these people to give help, when it is called for by the Prophet of Allah (S.A.W.). But in religious wars each party shall remain impartial" [14]. War for religion is to be held exempt from this record. The Prophet made an agreement with the Banu Ghifar to help and support each other and establish good neighbor relations Good-neighbor relations of that time and our days also include the provision of legal assistance in criminal cases.

The Treaty Signed with the Juhaynah Tribe provides that they will receive help against those who battle and tyrannize against them. "Whoever from the tribe of Juhaynah accepts Islam, says prayers, pays the Zakat, remains subservient to Allah and his Prophet and keeps on paying Khums out of the gains of war and declares his acceptance of Islam and keeps aloof from the infidels; he is in the protection of Allah and His Prophet" [14]. Oppression can be understood in terms of harassment, exploitation of the Juhaynah tribe, which is contrary to Islamic dogmas as justice, the well-being of people, etc.

"This treaty signed by the Prophet with the Juhaynah tribe legitimized helping each other in the event of an aggression. Those nomadic members who fulfill their obligations and who are by no means in violation of anything have all the rights granted to natives" [15]. Here one can again trace the help and protection of the natives, with whom there is no agreement, i.e. unilateral assistance.

The Prophet always remained true to the treaties signed with the mushriks. During the debate and writing of the treaty, Abu Jandal, son of the Quraish delegate Suhayl bin Amr wished to take refuge as a Muslim under the Prophet's protection and asked Prophet Muhammad to save him from the mushriks. However, the Prophet did not accept Abu Jandal emphasizing that he was not able to deviate from the articles of the treaty and that they should remain true to it. Despite the objection of the Muslims: "How can Abu Jandal be returned to the mushriks when he is a Muslim?", and although Abu Jandal cried out, "O Muslims! Though I came as a Muslim, will I be returned to the mushriks?" the Prophet did not violate the treaty and returned him [15]. This example, in fact, is a good example for those who, in order to avoid the extradition of criminals, resort to illegal movement, abduction from the territory of one state with or without the knowledge of the authorities of that state, there are even efforts to justify the abduction of criminals despite the existence of legal assistance treaties. In the United States, the decision of the US Supreme Court on the case of *Alvarez-Machain v. United States* [31] is considered the main court precedent for the illegal extradition of a criminal. The Supreme Court held that, "if the Extradition Treaty does not prohibit respondent's abduction, the rule of Ker applies and jurisdiction was proper. The fact of respondent's forcible abduction does not, therefore, prohibit his trial in a court in the United States for violations of the criminal laws of the United States". Otto Adolf Eichmann

was one of the major organizers of the Holocaust – the so-called “Final Solution to the Jewish Question” in Nazi terminology. Eichmann was captured by Mossad agents in Argentina on 11 May 1960. Argentina had a history of turning down extradition requests for Nazi criminals, so rather than filing a probably futile request for extradition, Israeli Prime Minister David Ben-Gurion made the decision that Eichmann should be captured and brought to Israel for trial. Otto Adolf Eichmann was smuggled out of Argentina aboard the aircraft. On 15 December 1961, Eichmann was sentenced to death by hanging [1].

“Abu Basir, who was captured by the mushriks managing to flee to Medina, yet again in accordance with the articles of the treaty was handed over by the Prophet to the two agents that arrived in Medina. In concordance with the Hudaibiyah truce, the parties were to remain at peace for a period of 10 years and would not violate this even confidentially. However, the Banu Bakr tribe, ally of the Quraish tribe, acted against the truce by attacking the Huzaa tribe, ally of the Prophet. This violation eventually led to the conquest of Mecca” [15].

According to the Taif Agreement with the inhabitants [15], Taif and its environs were declared a sacred territory, it was also stipulated that its inhabitants were not associated with the provisions of the Sharia mentioned above, and that they were the same as the Muslim community. The text of the agreement also included clauses on the prohibition of usury, issues of lending and the safety of property, trade relations, a provision on the right to independently choose tribal leaders, articles relating to Quraish-Sakifi relations, as well as a number of legal provisions on the fate of prisoners taken by the inhabitants of Taif. These terms of the treaty are in fact the unification of crimes at the international level and the prototypes of these treaties are individual international treaties, such as the Rome Statute of the International Court of Justice, 1998; the UN Convention against Corruption, 2003; the Council of Europe Criminal Law Convention on Corruption, 1999; Convention against Cybercrime, 2001; European Convention for the Suppression of Terrorism, 1977 etc.

Thanks to the agreements reached on the Arabian Peninsula, peace was ensured, the customs of jahiliyya were put aside in the past, and attacks on Muslims were prevented. Surah at-Tawbah, sent down in the 9th year of the Hijri, outlined the course of action that should be followed in relations with the polytheists in the future. The Prophet's treaties were concluded with the aim of establishing good-neighbor relations, mutual assistance is provided. This meant mutual assistance in relations with other communities, including cooperation in criminal matters.

7. Recommendations

Issues of legal assistance between states in criminal cases were regulated by the provisions of the Holy Quran, the hadiths of the Prophet and various treaties of the Prophet with neighbouring tribes and correspond to the norms of modern international treaties on legal assistance between states. Therefore, the influence of Islamic norms and the practice of treaties on the development of norms on legal assistance between states in criminal matters should be assessed according to historical value, and some provisions should be introduced into modern legal aid treaties. The following norms of Islamic law and treaties of the Prophet must be accepted in all studies as historical facts:

- The fight against crime is one of the goals of Islamic law, and it is a good deed, so assistance in good deeds is also legal assistance between states.

- Islam forbids helping those who ask for support from Muslims if it violates existing agreements.
- The Holy Quran and the Sunnah of the Prophet talk a lot about the importance of mutual assistance, a lot is said about the importance of mutual assistance and brotherhood in Islam, and Islam in relations with other peoples is guided by the principle of reciprocity.
- In the sources of Islam, it is impossible to find provisions on burdening the provision of assistance with reciprocity. Reciprocity is not expected from anyone who is helped, but from Allah.
- Brotherhood is one of the noble provisions of Islam, and as the history of Islam shows, it was used without distinction in relations between Muslims, as well as with other people living on the territory of Islamic states.
- Islamic law in interstate relations proceeds from the principle of reciprocity, but there are other examples in the contractual practice of the Prophet. According to the Treaty of Hudaibiyah, the Muslims do not oblige the Quraysh to return the Muslims who have defected to them, but they return the Quraysh who have defected to the Muslims and is essentially an exception to the principle of reciprocity.
- The Prophet's treaties were concluded with the aim of establishing good-neighbor relations, mutual assistance is provided. This meant mutual assistance in relations with other communities, including cooperation in criminal matters.

8. Conclusion

The history of legal assistance in criminal matters between States shows that the effectiveness of the institution of legal assistance depends on political will, the level of democracy of States, and other subjective factors. The development of the institution of treaty-based legal assistance has been slower than that of organized transnational crime. Sometimes formal considerations of sovereignty prevent states from expanding the scope of legal assistance unilaterally, as was done in the Hudaibiyah Treaty of the Prophet. At this point, treaty-based legal assistance between groupings of states united along territorial, religious, economic, and other lines is more developed than between two states. The influence of religious norms, including those of the Holy Koran and other sources of Islamic law on international relations, including the cooperation of states in the field of legal assistance shows itself in a closer cooperation of states such as the League of Arab States, united according to the linguistic principle, the European Union, united according to the territorial and religious principle. We believe that a waiver of the principle of reciprocity in certain cases, for example in the fight against serious crime, would set a precedent for cooperation with subsequent expansion. All states have an interest in combating crime at the national and international levels, the effectiveness of which depends on the level of cooperation.

The results of the study, analysis, and comparison of the provisions of the Holy Quran and other sources of Muslim law with modern national and international norms on legal aid will be useful, first of all, for the employees of law enforcement agencies and research institutes.

The analysis and generalized conclusions in the article can also be used in the preparation and improvement of legislative and international acts on legal assistance.

References (APA)

- [1]. Adolf Eichmann. Retrieved from https://en.wikipedia.org/wiki/Adolf_Eichmann
- [2]. Aristotle. Retrieved from <https://libquotes.com/aristotle/quote/lbv3m6a>
- [3]. Code of Criminal Procedure of the Azerbaijan Republic (2000) (2000, July 14, №907-IQ). Retrieved from <https://www.legislationline.org/documents/action/popup/id/8876>
- [4]. Constitution of Medina Prophet Muhammad (622 CE). Retrieved from <https://static1.squarespace.com/static/5097fe39e4b0c49016e4c58b/t/5c8153eeec212d7117477f8f/1551979503244/Constitution-Medina.pdf>
- [5]. Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf
- [6]. Convention on the Law of Treaties 1969. Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
- [7]. Convention on Cybercrime (2001). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty_detail&treatyid=185
- [8]. Criminal Code of the Republic of Azerbaijan (1999). Retrieved from https://www.legislationonline.org/download/id/8304/file/Azerbaijan_am2018_en.pdf
- [9]. Declaration on principles of international law friendly relations and cooperation among states in accordance with the Chapter of the United Nations (1970). Retrieved from <https://www.un.org/ruleoflaw/files/3dda1f104.pdf>
- [10]. Dialogue with Churches, religious associations or communities, philosophical and non-confessional organizations/EU Parliament. Retrieved from <https://www.europarl.europa.eu/at-your-service/en/be-heard/religious-and-non-confessional-dialogue>
- [11]. European Convention on the Suppression of Terrorism (1977). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty_detail&treatyid=090
- [12]. Kellogg-Briand Pact (1928). Retrieved from https://avalon.law.yale.edu/20th_century/kbpact.asp#art1
- [13]. Confucianism. Retrieved from <https://www.britannica.com/topic/Confucianism>
- [14]. Letters of Prophet Muhammad. Adam's Garden, 2022. Retrieved from <https://garden4adam.wordpress.com/2022/01/26/letters-of-prophet-muhammad/>
- [15]. Mehmet, Ali Kapar (2010). Treaties between the Prophet and the Idol Worshippers. Retrieved from <https://www.lastprophet.info/treaties-between-the-prophet-and-the-idol-worshippers>
- [16]. Mutual. Retrieved from <https://dictionary.cambridge.org/ru/mutual>
- [17]. Нестерова А.В. Принцип взаимности в международном сотрудничестве по делам об административных правонарушениях // *НВ: Административное право и практика администрирования*. – 2021. – № 1. – С. 48 - 58. Retrieved from https://nbpublish.com/library_read_article.php?id=35465
- [18]. Pact of Al-Hudaybiyah (628). Encyclopedia Britannica, 2022. Retrieved from <https://www.britannica.com/event/Pact-of-Al-Hudaybiyah>
- [19]. Петровский, А.В. Мусульманское уголовное право и особенности уголовного законодательства мусульманских государств: монография / А.В. Петровский. Краснодар: Кубанский гос. ун-т, 2013. 91 с.

- [20]. Protocol II to the Convention for the Protection of Human Rights and Fundamental Freedoms (1984). Retrieved from https://www.echr.coe.int/Documents/Library_Collection_P7postP11_ETC117E_ENG.pdf
- [21]. Rome Statute of the International Criminal Court (1998). Retrieved from. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.
- [22]. Sahih al-Bukhari. Translated by Muhammad Muhsin Khan. 1997.- Darussalam Publishers and Distributors, Riyadh-Saudi Arabia. -Volume 3, -541 p. Retrieved from <https://hamariweb.com/islam/sahih-bukhari-pdf-english1>
- [23]. Sahih Muslim,2007. Volume 4. Edited by: Huda Khatib (Canada). Maktaba Dar-us-Salam, London. Retrieved from https://muslimlibrary.com/books/2018/010/en_The_Translation_of_the_Meanings_of_Sahih_Muslim_Vol_1.pdf
- [24]. Шинкевич Д. В. Уголовный процесс: учебник для бакалавриата юридических вузов / О. И. Андреева [и др.]; под ред. О. И. Андреевой, А. Д. Назарова, Н. Г. Стойко и А. Г. Тузова. — Ростов н/Д: Феникс, 2015. — 445, с.427-442.
- [25]. The Council of Europe Criminal Law Convention on Corruption (1999). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=173>
- [26]. The Constitution of the Republic of Azerbaijan (1995). Retrieved from https://static.president.az/upload/Files/2018/03/09/4t31ckpjia_Konstitusiya_ENG.pdf
- [27]. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the UN Charter (1970). Retrieved from <https://legal.un.org/avl/ha/dpilfrscun/dpilfrscun.html>
- [28]. The Holy Quran. Retrieved from <https://al-quran.info/#home>.
- [29]. The Judgment of Nuremberg international Military Tribunal (1946). Retrieved from https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf
- [30]. United Nations Convention against Corruption (2003). Retrieved from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/0850026_E.pdf
- [31]. United States v. Alvarez-Machain, 504 U.S. 655 (1992). Retrieved from <https://supreme.justia.com/cases/federal/us/504/655/>